

Division of Workforce Development

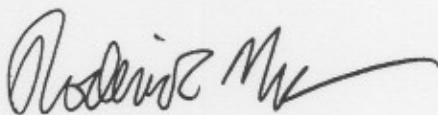
Roderick Nunn
Director

April 6, 2006

DWD Issuance 16-99, Change 3

Subject: Technical Assistance Guidance on Complaint and Grievance Procedures

1. **Purpose:** To update and transmit the Division of Workforce Development (DWD) technical assistance guidance on the subject of Workforce Investment Act (WIA) Equal Opportunity requirements and discrimination resolution procedures.
2. **Substance:** Attached is an addendum to and will clarify any interpretation of existing procedures found at 16-99, Change 1 and 2.
3. **Action:** All local areas should update existing Discrimination Complaint procedures using the attached information. These procedures are effective the date of this Issuance.
4. **Contact:** Please contact Juanita D. Reynolds, State WIA EO officer, (573) 751-2428 or e-mail, juanita.reynolds@ded.mo.gov with comments or questions.
5. **Cross Reference/** DWD Issuance 16-99 (Change 2)
Historical



Roderick Nunn, Director

RN/JDR/DP

Attachment

c: DWD Admin Group
DWD Central Office Managers
Regional Managers

Discrimination Complaint Resolution Procedures (Addendum)

Procedure to Follow:

Step 1: Initial review of written complaint(s) - Written complaints will be taken by the state or local workforce investment area, one-stop operator, or program operator from the complainant or the complainant's designated representative. The local equal opportunity officer is responsible for providing local coordination of discrimination complaints by determining if the complaint is covered by 29 CFR Part 37 and promptly conferring with the State EO Officer. A written complaint must include: 1) the complainant's name and address; 2) the identity of the individual or entity that the complainant alleges is responsible for the discrimination; 3) a description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint; and 4) the complainant's signature or the signature of the complainant's authorized representative.

- (a) **Record keeping.** All complaints must be logged. Upon receipt of a complaint, the local EO Officer will log the complaint. The log must include: 1) the name and address of the complainant, 2) the basis for the complaint, 3) a description of the complaint, 4) the disposition and date of the disposition of the complaint and any other pertinent information. Local complaint logs will be submitted to the State EO Officer on a quarterly basis. Information that could lead to the identification of the person filing the complaint **must** be kept confidential.
- (b) **Jurisdiction of the discrimination complaint must be determined.** In order to have jurisdiction to process the discrimination complaint: 1) the respondent against whom the complaint was filed must be a Workforce Investment Act (WIA) recipient, 2) the complaint must allege a basis for discrimination that is prohibited by WIA, and 3) the complaint must be filed within one hundred eighty (180) calendar days of the alleged discrimination.
- (c) **Notice of lack of jurisdiction.** If a determination is made that there is no jurisdiction to process the complaint, a notice of lack of jurisdiction must be sent to the complainant that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with the Civil Rights Center (CRC) within thirty (30) days from the receipt of the notice of lack of jurisdiction.
- (d) **Joint jurisdiction.** Where the complaint alleges discrimination by a WIA recipient, or service provider on a basis that is prohibited by *both* WIA and by a civil rights law independently enforced by that WIA recipient or service provider, the complaint must be referred to that WIA recipient or service provider for processing under their procedures. For example, WIA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIA recipient or service provider and they are also prohibited from discriminating on the basis of national origin, then the complaint will be referred to them for processing according to their own procedures. Notice must be sent to the complainant about the referral.

- (e) **Sole jurisdiction.** Where the complaint alleges discrimination by a WIA recipient or service provider on a basis that is prohibited by WIA and is not covered by a civil rights law independently enforced by that WIA recipient or service provider (i.e., political affiliation or belief, citizenship or participation in WIA Title I), the complaint must be processed by that WIA recipient or service provider under these procedures. When it is determined that WIA has sole jurisdiction over the discrimination complaint, the complaint will be processed by the state equal opportunity officer.

Step 2: Formal resolution. The State EO Officer must send written notice to the complainant stating the complaint has been received. This will take place within ten (10) working days of receipt of the complaint. The notice must list issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection. The notice must advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice. The notice must also give the complainant the right to choose an Alternative Dispute Resolution (ADR) process. A **Mediation Election** form will be sent to the complainant as documentation of notice of the mediation request.

- (a) **ADR process.** If the party filing the complaint, requests to use the ADR process for resolving the complaint, the state will make available a mediator. The mediator will schedule mediation by written notice, mailed to all interested parties at least seven (7) calendar days prior to the first mediation session. The notice will include the date, time and place of the mediation. The mediation process must be concluded within forty five (45) calendar days from the date the complaint was filed. The complaint is considered resolved when all parties of the complaint enter into a written agreement resolving the issues raised in the complaint. The written agreement must give notice that if the terms of the agreement are breached, the non-breaching party may file a complaint with CRC within thirty (30) calendar days of the date the non-breaching party learns of the breach. When the mediation fails to result in an agreement, the complainant will be advised of his/her right to file a complaint with CRC; however, the State EO Officer will continue with the formal investigation process.

Step 3: Notice of final action. The notice of final action must contain: 1) a statement regarding the disposition of each issue raised in the complaint and the reason for the determination, 2) a description of the way the parties resolved the issue(s), 3) if the complaint was resolved by mediation, a copy of the agreement will be attached to the Notice of Final Action, and 4) notice that the complainant has the right to file an appeal with CRC within thirty (30) calendar days from the date of the notice of final action is issued if dissatisfied with the WIA recipient's final action on the complaint.

The State EO Officer will review complaint data on a routine basis and provide technical assistance to the local WIA EO Officers in the complaint process.

DEFINITIONS

- Recipient /Program Operator

Recipient means any entity to which financial assistance under WIA Title I is extended, either directly from the U.S. Department of Labor (USDOL) or through the Governor or another recipient.

- State Equal Opportunity (EO) Officer

The State EO Officer is the individual designated at the state level with the oversight responsibility for coordinating, implementing, maintaining, and monitoring the nondiscrimination and equal opportunity requirements of the Workforce Investment Act (WIA) of 1998.

- Local Equal Opportunity (EO) Officer

The local EO Officer is the Local WIA designated staff person responsible for administration of the region and its sub-recipients' discrimination complaint process as outlined in the Complaint and Grievance Guide and these procedures.

- Civil Rights Center (CRC)

The CRC is the federal enforcement agency with the USDOL with jurisdiction over discrimination complaints alleging violations of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the WIA of 1998.

- Title VI Discrimination Complaints

Complaints alleging discrimination on the basis of race, color or national origin, in a federally assisted program. *CRC is responsible for enforcement.*

- Section 504

Complaints alleging discrimination based on the presence of any sensory, mental, or physical disability, in violation of Section 504 of the rehabilitation Act of 1973. *CRC is responsible for enforcement.*

- Americans with Disabilities Act (ADA)

Complaints alleging discrimination on the basis of disability in employment, public accommodation and services, transportation, state and local government operations and communication are covered under the Americans with Disabilities Act of 1990. The U.S. Equal Employment Opportunity Commission (EEOC), as well as, CRC are responsible for enforcement.

- Alternative Dispute Resolution (ADR)/Mediation Process

Mediation is a form of alternative dispute resolution attempted in a conference between the parties to a complaint that is facilitated by a disinterested third party. Both parties must agree to participate and participation is strictly voluntary. The intended outcome is an agreement between the parties that resolves the issues raised in the complaint. The agreement will be reduced to writing, signed by all parties and thereby becomes an enforceable contract.